

## **REMARKS**

This Amendment is in response to the Final Office Action mailed June 21, 2004 and is filed concurrently with a Request for Continued Examination (RCE). Claims 3, 7, 9, 17, 22, 37, 42, 47-48, 51, 53-80 have been cancelled without prejudice. Claims 1-2, 4, 6, 8, 10, 21, 23-24, 26, 28, 30, 43 and 46 have been amended. Reconsideration of all pending claims is respectfully requested.

Claims 1-20, 43-45, 55 and 63-66 have been rejected under 35 U.S.C. §112, second paragraph. In response, Applicant has amended claims 1, 10 and 43 since some of these claims have been cancelled without prejudice. Applicant respectfully requests withdrawal of the outstanding §112 rejection.

Claims 1-2, 6-7, 11, 13-16 and 18-20 were rejected under 35 U.S.C. §102(e) as being anticipated by Masters (USP 6,374,300). Moreover, claims 21-27, 29-31, 33-36, 38-41, 43-46, 49-50, 54-56, 58-61, 63-66, 69-70 and 78-80 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Masters while claims 8, 12, 28, 32, 52, 67, 68 and 72 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Masters in view of Hartman (USP 5,960,411). Applicant respectfully traverses these rejections in their entirety.

### ***Rejection Under 35 U.S.C. § 102***

In the Office Action, claims 1-2, 6-7, 11, 13-16 and 18-20 were rejected under 35 U.S.C. §102(e) as being anticipated by Masters. Applicant respectfully disagrees and contends that a *prima facie* case of anticipation has not been established.

As the Examiner is aware, in order to anticipate a claim under §102(e), Masters must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)(Emphasis added). Applicant respectfully traverses the rejection because Masters does not teach each and every element set forth in pending independent claim 1. For instance, as an example, Masters does not teach registering information *with a service provider*. Emphasis added. This "information" comprises a *preferred order of servers for routing content to a viewer*. Emphasis added.

In light of the foregoing, Applicant respectfully requests the Examiner to reconsider the allowability of the independent claim 1 as well as those claims dependent thereon.

### ***Rejection Under 35 U.S.C. § 103***

Claims 21-27, 29-31, 33-36, 38-41, 43-46, 49-50, 54-56, 58-61, 63-66, 69-70 and 78-80 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Masters. Moreover, claims 8, 12, 28, 32, 52, 67, 68 and 72 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Masters in view of Hartman (USP 5,960,411). Applicant respectfully traverses these rejections because a *prima facie* case of obviousness has not been established.

As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See MPEP §2143, p. 2100-124 (8th Ed., rev. 1, Feb. 2003); See also In re Fine, 873 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).*

Independent claims 21 and 41 include the limitation of computer readable program code (and receiver) for *registering a plurality of servers with a service provider*. Emphasis added. In contrast, Masters teaches cookies, which are state objects that enable different types of application programs to be written for Internet-based environment. *See column 5, lines 47-50 of Masters.* More specifically, these cookies provide information to the server array controller to reliably and efficiently load balance client demands. *See column 7, lines 29-37 of Masters.* There is no registration of the plurality of servers with the service provider as claimed.

### ***Conclusion***

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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Dated: 9/21/2004

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